



City of Seattle

Gregory J. Nickels, Mayor
Department of Design, Construction and Land Use
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**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF DESIGN, CONSTRUCTION AND LAND USE**

Project Name: Amendments to the Land Use Code to prohibit minor communication utilities in Single Family and Residential Small Lot zones, with exceptions due to structure type and availability of service

Applicant Name: City of Seattle - Department of Design, Construction and Land Use

Address of Proposal: City of Seattle, State of Washington

SUMMARY OF PROPOSED ACTION

The proposal is to amend the Land Use Code to modify existing regulations governing the location of telecommunication facilities and devices. The regulations will prohibit minor communication utilities from being located in Single Family and Residential Small Lot zones, except when located completely within a non Single Family structure or when there is no alternative for providing service. When no alternative for providing service exists, the location of minor communication utilities in Single Family and Residential Small Lot zones will be subject to a discretionary and appealable discretionary review process.

The following approval is required:

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code.

SEPA DETERMINATION: ☐ Exempt ☒ DNS ☐ MDNS ☐ EIS

☐ DNS with conditions

☐ DNS involving non-exempt grading, or demolition, or another agency with jurisdiction.

Background

On September 23, 2002, the City Council approved legislation that amended Land Use Code regulations governing telecommunication facilities and devices. The legislation addressed the location and placement of such facilities and devices, review processes based on the type of device and corresponding zones, height limits, mitigation of visual impacts, and proximity to landmarks and/or historic structures. In addition, the legislation addressed changes made to

federal and state laws, including the Federal Telecommunications Act (1996), Federal Communications Commission Rules (1997), and Washington State Legislation (RCW 43.21C.0384).

Since the September 23, 2002 provisions went into effect, there has been a noticeable increase in the number of proposals to locate minor communication utilities in Single Family zones. These proposals have generally come in one of five forms:

1. Attachments to City Light poles on street ROW;
2. Antennae attached to existing major or minor communication utility towers;
3. Antennae located entirely within non-single family structures (churches, apartment buildings, schools, etc.)
4. Antennae attached to a proposed monopole on a lot that contains non-single family structures; and
5. Antennae located on or within a structure.

The proposed revisions to the Land Use Code are designed to address this unintended effect of the code revisions from September 23, 2002, which appear to have caused a significant increase of this commercial intrusion into Single Family zones.

Existing Regulations

Current regulations allow four options for the placement of minor communication utilities in Single Family and Residential Small Lot zones.

1. Minor communication utilities that are attached to existing major and minor communication utilities (i.e. transmission towers and monopoles); or minor communication utilities that are contained entirely within a non-single family structure are Permitted Outright.
2. Minor communication utilities attached to City Light poles in street ROW, following approval from the City Light Superintendent. This approval requires the DCLU Director to issue a recommendation to the Superintendent based on Administrative Conditional Use criteria.
3. Minor communication utilities attached to a monopole on a lot that doesn't contain a single family structure (i.e. a church, school or apartment building), or minor communication utilities that are attached to a structure that is not a single family residence (i.e. a church, school or apartment building) require Administrative Conditional Use approval.
4. A minor communication utility may be located on a vacant lot or a lot that contains a single family residence prior to approval of a Council Conditional Use permit.

In those specific cases where an Administrative Conditional Use approvals is required, these projects are evaluated based on criteria contained in existing subsection 23.57.010 C.2. The criteria requires adherence to visual impact standards and locational criteria to determine if "the facility and location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service." In this situation, cellular providers are allowed to make the determination of what constitutes "effectively providing service." Such a determination is not subject to DCLU review or approval.

Currently, the only time where DCLU requires verification of a wireless provider's service need is for Council Conditional Use reviews. Such a review requires, in addition to consideration for

visual impacts, that *“a facility at the site proposed is necessary to close an existing significant gap or gaps in the availability of a wireless carrier’s communication service or to provide additional call capacity and that, absent the proposed facility, remote users of a wireless carrier’s service are unable to connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication.”*

Since this provision’s adoption on September 23, 2002, no Council Conditional Use applications have been submitted. However, during the same time period there have been approximately 30 Administrative Conditional Use applications for minor communication utilities in Single Family zones. Of these permits, the majority have been for attachments to City Light poles with the remaining distributed between transmission towers, rooftops of nonconforming multifamily structures, or church sites. In addition, seven Council Conditional Use applications that were applied for prior to the September 23, 2002 legislation were changed to Administrative Conditional Use applications after adoption of the legislation. Accordingly, new code language is proposed to provide a better set of tools to analyze both the impacts and the need for the facilities.

Proposed Regulations

The proposal is to amend the Land Use Code to modify existing regulations governing the location of telecommunication facilities and devices under SMC 23.57. The regulations will prohibit minor communication utilities from being located in Single Family and Residential Small Lot zones, except when there is no alternative for providing service as required by federal regulations or when located in an existing structure that is not a single family structure.

The proposed code revisions would require cellular providers to demonstrate a verifiable and immediate need for service in order to be located in a Single Family or Residential Small Lot zone. To prove that a verifiable and immediate need for service exists, cellular providers would have to demonstrate by technical studies that a significant gap in service would exist without a facility at the proposed location.

Adoption of the proposal would subject all applications for minor communication utilities in Single Family and Residential Small Lot zones to discretionary review as a Type 2 decision, under SMC 23.76. Similar to the current review provisions used in the review of Council Condition Use applications, this proposed review process would require a demonstration of the following criteria through technical studies:

- 1) the facility is for commercial mobile service, unlicensed wireless services, fixed wireless service, or common carrier wireless exchange access service as defined by applicable federal statutes or regulations; and*
- 2) a facility at the site proposed is necessary to close an existing significant gap or gaps in the availability of a wireless carrier’s communication service and that, absent the proposed facility, remote users of a wireless carrier’s service are unable to connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication; and*
- 3) that the facility and the location proposed is the least intrusive facility at the least intrusive location consistent with effectively closing the service gap. In considering the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic and the displacement of residential dwelling units in a residential zone.*

The following chart demonstrates the differences between existing and proposed minor communication utility regulations in Single Family and Residential Small Lot zones:

MINOR COMMUNICATION UTILITIES IN SINGLE FAMILY AND RESIDENTIAL SMALL LOT ZONES		
<u>Type of Applications</u>	<u>Existing Provisions Approvals Required</u>	<u>Proposed Amendments Approvals Required</u>
Antenna attached to existing major or minor communication utility towers	Permitted Outright	Not permitted, except where there is a significant gap in service, per 23.57.009
Antenna located entirely within a structure that is not a single family residence	Permitted Outright	Permitted Outright
Antenna attached to a proposed monopole on a lot that contains a structure that is not a single family residence	Administrative Conditional Use	Not permitted, except where there is a significant gap in service, per 23.57.009
Antenna attached to structure that is not a single family residence	Administrative Conditional Use	Not permitted, except where there is a significant gap in service, per 23.57.009
Attachments to City Light poles	Recommendation to City Light based on single family Administrative Conditional Use criteria	Not permitted, except where there is a significant gap in service, per 23.57.009
Antenna located on a vacant lot or on a lot that contains a single family residence	Council Conditional Use, where there is a significant gap in service, per 23.57.009	Not permitted, except where there is a significant gap in service, per 23.57.009

ANALYSIS – SEPA

This proposal is for adoption of legislation and is defined as a non-project action. This action is not specifically addressed as a Categorical Exemption (SMC 25.05.800), therefore it must be analyzed for probable significant adverse environmental impacts. A threshold determination is required for any proposal that meets the definition of action and is not categorically exempt.

Future projects subject to the provisions of this amendment may be reviewed for their individual site-specific environmental impacts. These projects will have to disclose the impacts that result from the changes proposed in this legislation throughout the SEPA process.

Height, Bulk and Scale

Current code requirements allow for placement of minor communication utilities in Single Family and Residential Small Lot zones through three different discretionary avenues: Administrative Conditional Use, recommendation to City Light based on Administrative Conditional Use criteria, or the Council Conditional Use process. Antenna located entirely within a non-single family structure or attached to an existing major or minor communication

utility tower is permitted outright. The proposal will not permit minor communication utilities in Single Family or Residential Small Lot zones unless it is located entirely within an existing structure that is not a single family structure or where there is a significant gap in service, per SMC 23.57.009.

This change is expected to reduce the potential for commercial intrusion in Single Family and Residential Small Lot zones while maintaining legally required consistency with federal law. This would in essence, allow for a minimal number of minor communication utilities in the Single Family and Residential Small Lot zones while effectively closing a significant gap in service. The proposed ordinance would reduce impacts of height, bulk and scale given the fact that minor communication utilities will be less likely to locate in the aforementioned zones. If a significant gap is demonstrated, visual impacts shall still be regulated by existing requirements of SMC 23.57.016.

Future development of minor communication utilities may “spill-over” into adjacent, more intensive zones such as Lowrise and Commercial. Any impacts onto adjacent Single Family or Residential Small Lot zones will be mitigated through existing development standards such as height, noise and screening in SMC 23.57.

Aesthetics

As mentioned previously, new minor communication utilities will not be permitted in Single Family or Residential Small Lot zones unless: A) the antenna will be located entirely within a structure that is not a single family residence, or B) there is a significant gap in service per SMC 23.57.009. The reduction in the number of minor communication utilities permitted will directly reduce the aesthetic impacts. Minor communication utilities permitted through SMC 23.57.009 will remain subject to the existing standards of SMC 23.57.016 which mitigate visual impacts to all neighboring properties. The allowance of minor communication utilities in a structure that is not a single family residence is an existing regulation in the code and will not create additional impact with this proposal.

Land Use

The proposed code changes have created a number of revisions that will likely reduce the number of impacts on the property or on adjacent properties in Single Family or Residential Small Lot zones. The following provides more specific analysis of the proposed code changes:

General Provisions

- Prohibiting the location of minor telecommunication utilities in Single Family and Residential Small Lot zones where there is not a significant gap in service is expected to dramatically reduce the visual impacts associated with these facilities.
- Existing provisions and development standards will mitigate impacts associated with minor telecommunication utilities approved through the Special Exceptions process when there is a significant gap in service.
- Antenna located entirely within a structure that is not a single family residence in a Single Family or Residential Small Lot zone is currently permitted outright and is not proposed to be changed at this time.

- Properties with a zoning designation other than Single Family or Residential Small Lot have existing regulations in place which will mitigate impacts on surrounding areas.

Type of Approval Required and Approval Criteria, By Zone

Single Family Zones Facilities to be located on single family structures or vacant land would have to be reviewed through a Type 2 discretionary review process, as governed under SMC 23.76. The proposed regulations would require that such a use can only be permitted if it is demonstrated that the location on the specific site is required to fill a gap in wireless services. The actual proposed language is shown in Attachment A. This change is expected to reduce the potential for commercial intrusion in single family zones while maintaining legally required consistency with federal law. This change is not expected to have significant impacts because existing code standards would still be applied.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(C).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

SEPA CONDITIONS

None.

Signature: (signature on file) Date: May 29, 2003
Michael Jenkins, Land Use Planner
Department of Design, Construction and Land Use